

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAVON FORD,

Plaintiff,

-against-

WESTCHESTER COUNTY,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 6/18/2021

18 CV 2696 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

Pro se Plaintiff Kavon Ford (“Plaintiff”) commenced this action on or about March 27, 2018 against Defendants Aramark, Kevin Cheverko, and Westchester County alleging Constitutional violations pursuant to 42 U.S.C. §§ 1983, 1985, and 1997e. (ECF No. 2.) On June 17, 2019, Defendants moved to dismiss (ECF No. 43), and on January 23, 2020, the Court issued an Opinion & Order dismissing all claims except for a conditions of confinement claim pertaining to cold temperatures against Westchester County. (ECF No. 61.) The case was then referred to Magistrate Judge Lisa M. Smith, and subsequently Magistrate Judge Andrew E. Krause, for the purposes of conducting discovery. (ECF No. 68.) On February 25, 2021, Defendant indicated that Plaintiff had been deposed and discovery was complete. (ECF No. 82.)

Following the completion of discovery, this Court held a telephonic status conference on March 26, 2021 and Plaintiff failed to appear. The Court rescheduled the telephonic status conference for April 23, 2021 and instructed Defendant’s counsel to serve Plaintiff with a letter indicating that he had failed to appear at the status conference on March 26, 2021 and informing him of the rescheduled date and time. (ECF No. 83, 83-1.) On April 23, 2021, Plaintiff again failed to appear at the telephonic conference. On May 10, 2021, this Court issued an Order directing Plaintiff to show cause at a telephonic hearing on June 18, 2021 as to why this action should not be dismissed pursuant to Rule 41(b) for failure to prosecute.

(ECF No. 89, 90, 91.) Plaintiff again failed to appear at the June 18, 2021 telephonic hearing and Defendant's counsel indicated that she had not received any correspondence from Plaintiff regarding the hearing or two prior status conferences.

Under Rule 41(b) of the Federal Rules of Civil Procedure, "a district judge may, *sua sponte*, and without notice to the parties, dismiss a complaint for want of prosecution." *Taub v. Hale*, 355 F.2d 201, 202 (2d Cir. 1966); *see West v. City of New York*, 130 F.R.D. 522, 524 (S.D.N.Y. 1990) ("[T]he Supreme Court has recognized the inherent power of a district judge to dismiss a case for the plaintiff's failure to prosecute."). "Dismissal for want of prosecution is a matter committed to the discretion of the trial judge." *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993) (internal quotation marks omitted). This discretion, however, "is conditioned by certain minimal requirements." *Id.* (internal quotation marks omitted). In particular, the Court should consider:


(1) the duration of plaintiff's failures; (2) whether plaintiff had received notice that further delays would result in dismissal; (3) whether defendant is likely to be prejudiced by further delay; (4) whether the district judge has carefully balanced the need to alleviate court calendar congestion and a party's right to due process; and (5) whether the court has assessed the efficacy of lesser sanctions.

Id. (internal quotation marks omitted).

Plaintiff has failed to appear at the last three proceedings scheduled before this Court and has not corresponded with the Court or Defendant for several months. The Court specifically directed Plaintiff to appear at the June 18, 2021 hearing so that Plaintiff could be heard as to why an Order should not be issued pursuant to Rule 41(b). (ECF No. 89.) Plaintiff failed to appear or otherwise respond to that Order. Accordingly, Plaintiff's remaining claim is dismissed, without prejudice, pursuant to Rule 41(b). The Clerk of the Court is kindly directed to mail a copy of this order to *pro se* Plaintiff and show service.

Dated: June 18, 2021
White Plains, New York

SO ORDERED:


NELSON S. ROMÁN
United States District Judge